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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,331	01/24/2005	Rudiger Autschbach	REUL et al 1 PCT	5991
25889	7590	01/25/2007		
WILLIAM COLLARD COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			EXAMINER WITCZAK, CATHERINE	
			ART UNIT	PAPER NUMBER
			3767	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/25/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/522,331

Applicant(s)

RUEL ET AL.

Examiner

Catherine N. Witczak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 18 December 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 30-117 is/are pending in the application.
- 4a) Of the above claim(s) 39-117 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 1/24/05; 3/16/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election with traverse of 30-38 in the reply filed on 12/18/2006 is acknowledged. The traversal is on the ground(s) that a search for the species embodied in Species AI would include a search for the remaining species, and thus would not constitute an unreasonable search. Applicant's traversal is unpersuasive. While a search of the prior art for a species may overlap with that of another species, the searches are not co-extensive and thus would be an undue burden on Office resources, even in the Groups were arbitrarily placed in the same class and subclass. The PTO classification is merely an administrative convenience and is not dispositive of relatedness of application.

The requirement is still deemed proper and is therefore made FINAL.

### *Information Disclosure Statement*

The information disclosure statement filed 1/24/2005 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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1. Claims 30, 32, 33, and 35 - 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Berry et al (US 5,098,376).

Claims 30, 32, and 33: Berry et al disclose in Figure 2 an intravenous oxygenator having a twisted bundle of fibers inclined about 62° over a major part of their length connected to a gas supply and evacuation means (column 6, lines 37-69).

Claim 35: Berry et al disclose in column 7, line 61- column 8, line 2 the bundle of fibers having a diameter from 15 to 25 mm.

Claims 36, 37, and 38: Berry et al disclose in column 8, line 32 – column 11, line 55 the connection of the fibers being secured against untwisting themselves and having a frictional means for limiting further relative rotation.

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berry et al ('376) in further view of Berry et al ('376).

Berry et al disclose the claimed invention except for explicitly disclosing the connections being relatively rotated from 90° to 300° per 30mm fiber length. At the time the invention was made, it would

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have been an obvious matter of design choice to a person of ordinary skill in the art to rotate the connections from 90° to 300° per 30mm fiber length because Applicant has not disclosed that rotating the connections from 90° to 300° per 30mm fiber length provides an advantage, is used for a particular purpose, or solves a stated problem. Therefore, it would have been an obvious matter of design choice to modify Berry et al to obtain the invention as specified in claim 31.

3. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berry et al ('376) in view of Berry et al (US 5,125,902).

Berry et al ('376) disclose the claimed invention except for the fibers resting against an impermeable sheathing. Berry et al ('902) disclose in Figure 10 that it is known to use of sheathing to enclose a twisted bundle of fibers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention as taught by Berry et al ('376) with an impermeable sheath as taught by Berry et al ('902), since such a modification would facilitate the insertion of the device into the patient (abstract).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine N. Witczak whose telephone number is (571) 272-7179. The examiner can normally be reached on Monday through Friday, 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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11/14/07

KEVIN C. SIRMONS  
SUPERVISORY PATENT EXAMINER

*Kevin C. Sirmons*